

**RDA 04-011  
December 21, 2004**

**A Resolution of the Redevelopment Agency of the City of Sunnyvale  
Approving Minor Revisions to the Disposition and Development and  
Owner Participation Agreement Between the Agency and Fourth  
Quarter Properties XLVIII in connection with Town Center Mall, and  
Authorizing the Executive Director to Take Actions Necessary to  
Execute and Implement the Authorized Agreement**

**Corrections to Attachment A: Disposition and Development and  
Owner Participation Agreement as Adopted on August 17, 2004,  
with blue-line revisions recommended by staff**

Plans shall be completed and submitted to the City pursuant to Section 3.05 by September 1, 2005.

(c) Developer may undertake the work for which it has prepared the Initial Plans prior to the Closing. If Developer desires to undertake that work, prior to undertaking the work, it shall obtain all permits and approvals required by the City or other governmental entities to undertake the work, and comply with Section 3.08 with regard to the work being undertaken. The Developer shall also prepare and obtain Agency approval of and implement a construction mitigation program containing the elements specified in Section 5.13 below to the extent relevant to the work that the Developer is undertaking. Provided Developer obtains the required permits and approvals and the Agency approval of the construction mitigation program, then, notwithstanding any other provision of this Agreement, Developer shall be permitted to undertake the work described in the Initial Plans prior to the Closing.

(d) The Developer may request that the Agency Executive Director extend for up to an additional ninety (90) days the deadlines set forth in subsection (b) and Section 3.05 for completion and submission to the City of the Initial Plans and for completion and submission to the City of the remaining Construction Plans. The Executive Director shall not withhold approval of such an extension if the extension is reasonably necessary to complete the Initial Plans or the Remaining Construction Plans as the case may be.

### 3.05 Building Permits.

~~The Developer shall submit the Initial Plans to the City by July 1, 2005 and apply to the City for the building permits necessary to undertake the work described in the Initial Plans. The Developer shall submit to the City by September 1, 2005 the Construction Plans remaining after preparation of the Initial Plans and apply to the City for the building permits necessary to construct the elements of the Project not included in the Initial Plans. Upon submission of the Initial Plans to the City and upon submission of the remaining Construction Plans to the City, the Developer shall diligently pursue and obtain the building permits for construction of the Project. The applications for building permits shall be consistent with and incorporate the Initial Plans and the Construction Plans and shall be consistent with the City Approvals, the approved New Parcel Map and, in the case of the Public Improvements, in conformance with the City's standards for such improvements.~~

### 3.06 Other Permits and Approvals.

At the time Developer applies to the City for building permits, Developer shall also apply for, diligently pursue and obtain any other City or other governmental or utility permits or approvals necessary to construct the Project including but not limited to demolition permits and encroachment permits.

### 3.07 Evidence of Financing.

At the time Developer applies to the City for building and construction permits, it shall also submit to the Agency evidence reasonably satisfactory to the Agency that Developer has

obtained firm commitments of equity and loan funds to construct, complete and operate the Project in accordance with this Agreement. The evidence shall be for the entire Project even though Developer may have completed the Initial Plans and commenced construction of the improvements shown in the Initial Plans. Such evidence shall include the following:

(i) Copies of the agreement or other documents committing the lender and/or equity funds for construction and, if required to obtain construction financing, permanent financing; equity funding shall constitute at least twenty percent (20%) of the Project costs, provided, however, no equity funding shall be required if the construction loan and completion of the construction will be guaranteed by Stanley E. Thomas, the president of the managing member of Developer, and the debt owing, if any, to Lehman is subordinate to the construction loan.

(ii) Financial information concerning lenders and equity investors (if any are required) showing the ability of the lenders and/or equity investors to provide the committed funds.

(iii) Project cash flows showing the estimated costs of constructing and developing the Project in accordance with this Agreement, when those costs will be paid and when committed loan and equity funds (if any are required) will be available.

(iv) Evidence of leases or lease commitments sufficient to assure the availability of the identified loan and equity funds (if any are required) in accordance with the Project cash flows.

The Agency shall review the evidence of financing and approve or disapprove it in writing within fifteen (15) days following receipt. The Agency shall approve the evidence of financing if it indicates that Developer will have sufficient funds to construct the Project and pay for the Project costs when due. If the Agency disapproves, it shall set forth in detail the reasons for disapproval and Developer shall then have sixty (60) days to submit revised evidence of financing. The Agency shall approve or disapprove the revised evidence of financing within fifteen (15) days following receipt.

Developer and the Agency shall cooperate to retain financial information submitted by Developer as confidential to the extent permitted by law.

### 3.08 Evidence of Construction Contract.

At the time the Developer obtains building permits for the Project, it shall submit to the Agency an executed contract or contracts with reputable contractors for construction of the Project at a cost consistent with the Project cash flows approved by the Agency pursuant to Section 3.07 above. The construction contracts shall contain the provisions required pursuant to Section 5.05 and Section 5.06 below. Agency review shall be limited to determining if the contract has the provisions required by Section 5.05 and 5.06 below and that the contract amount is consistent with the Project cash flows.

At the time Developer obtains building and construction permits for the Project, Developer shall deliver to the Agency payment and performance bonds for the full amount of the cost of construction of the Public Improvements. Such bonds may be provided through Developer's contractors and/or subcontractors. Such bonds shall be from a reputable bonding company or companies licensed to do business in California and shall name the Agency as co-obligee.

3.09 Approval/Assumption of Obligations by Residential Developer.

Prior to the Closing, the Agency, Developer and the Residential Developer shall enter into an assumption agreement whereby the Residential Developer assumes the obligation to construct the residential portions of the Project in accordance with the terms and conditions of this Agreement. Such assumption agreement shall not relieve the Developer of any obligations under this Agreement. If, prior to the Closing, Developer desires to change the Residential Developer, the Developer shall submit to the Agency Executive Director the qualifications of the proposed substitute Residential Developer or Residential Developers for approval. The Executive Director shall not unreasonably withhold approval of the substitute Residential Developer or Residential Developers if the proposed substitutes have the necessary financial capacity and development experience to undertake and complete the development of the residential portion of the Project in accordance with this Agreement. Developer shall be entitled to separate written notice from the Agency of any default of Residential Developer, and opportunity to cure such default of the Residential Developer, on the same basis as provided in this Agreement with respect to defaults of Developer. In no event shall Developer be in default under this Agreement during any period during which Developer is diligently prosecuting any cure of any default of Residential Developer.

3.10 Submissions for Less Than Entire Project.

Developer may elect to initially construct less than the Entire Project but in no event less than the Minimum Project. If Developer elects to initially construct less than the entire Project, Developer shall submit to the Agency in writing notice of that election and a detailed description of the portions of the Project it will initially construct which in any event shall not be less than the Minimum Project. Said notice and description shall be submitted to the Agency no later than at least thirty (30) days prior to the date the Developer is required to apply for a building permit pursuant to Section 3.05 above.

If Developer elects to initially construct less than the entire Project, then the submissions pursuant to Section 3.04 through Section 3.08 of Construction Plans, applications for building permits, applications for other permits or approvals, evidence of financing, and evidence of construction contracts need only pertain to the portion of the Project that Developer has elected to initially construct.

If the Developer does not initially construct the entire Project, then prior to later constructing any other portion of the Project, the Developer shall satisfy the conditions set forth in Section 3.04 through Section 3.06 above prior to commencing construction of that portion of the Project. Nothing in this Agreement is intended to prevent Developer from later constructing

or before the Closing, the parties shall execute and deliver to Escrow Holder written instructions consistent with this Agreement to consummate the transactions at the Closing.

4.03 Conveyance Consideration.

The Agency shall convey the Agency Conveyance Parcels to the Developer in consideration for Developer's performance of its obligations under this Agreement. The Developer shall convey the Developer Conveyance Parcels to the Agency in consideration for the Agency's performance of its obligations under this Agreement.

4.04 Closing Date.

The Closing shall occur within ten (10) days following the date on which Developer and Agency have satisfied all the conditions set forth in Section 2 and Section 3 above and Section 4.11 and Section 4.12 below, but in no event later than December 1, 2005. The Developer may request that the Agency Executive Director extend for up to an additional ninety (90) days the deadlines for Closing set forth in this section. The Executive Director shall not withhold approval of such an extension if the extension is reasonably necessary to accomplish the Closing. If any litigation challenging this Agreement or the Project is pending at the time otherwise set for the Closing, then the Agency and Developer may mutually agree to postpone the deadline for the Closing until the litigation is resolved.

4.05 Conveyances.

The Agency shall convey the Agency Conveyance Parcels to Developer by grant deed which shall be in the form set forth in Exhibit G (Grant Deed Form).

The Developer shall convey the Developer Conveyance Parcels to the Agency by grant deed in a form reasonably acceptable to the Agency and Developer.

4.06 Other Closing Documents.

(a) At the Closing, the Agency and Developer shall enter into the Public Parking Construction Lease attached as Exhibit I.

(b) At the Closing, the Agency and Developer shall enter into and record the Public Streets Maintenance Agreement attached as Exhibit H.

(c) At the time of Closing, the Agency and Developer shall take the steps necessary to terminate the Existing REA and record the New REA so as to make it effective against all the parcels in the Center Property.

(d) At the Closing the Agency and Developer shall execute and record the Memorandum of Agreement, attached to this Agreement as Exhibit K.

4.07 Possession.

reimburse the Agency for relocation costs as well as for reasonable costs incurred by the Agency for any consultants employed to assist with the relocation. The Agency's request for reimbursement shall include the bills and invoices showing in detail the costs for which reimbursement is sought.

5.13 Support of Existing Downtown Business During Construction.

(a) Prior to commencement of construction of the Project, Developer shall prepare, and submit to the Agency for approval and thereafter implement, a construction mitigation program designed to minimize the disruption to surrounding businesses during construction. In preparing the program, Developer shall consult with downtown Sunnyvale merchants. Such ~~plan~~program shall contain, at a minimum, the following:

- (i) Plan of travel routes for construction trucks to and from the site
- (ii) Location for sufficient construction worker parking, if off-site, shuttle service thereto if it is not within easy walking distance
- (iii) An enforcement mechanism to insure that construction workers and suppliers do not park in public parking facilities intended for customer parking
- (iv) Measures to mitigate the impacts upon operating businesses due to temporary loss of required parking during demolition and construction.
- (v) Signs indicating to the public that Macy's, Target and downtown stores are open for business during construction, and signs directing customers to available public parking facilities.

(b) During the planning and construction of the Project and while construction is underway until the entire Project is completed, Developer shall hold meetings with businesses and property owners in downtown as frequently as reasonably necessary (but no less frequent than monthly) to learn of any impacts on them during the prior month and to alert them to construction plans for the coming month. In addition, a website shall be maintained by Developer with a link from the City website to provide accurate and timely information on construction schedules and any potential disruptions to utilities, traffic and parking. Developer shall notify affected merchants, property owners and residents at least two weeks in advance of any planned utility disruption.

(c) During the planning and construction of the Project and until the entire Project is completed, Developer shall designate a coordinator who will be available 24 hours a day, seven days a week, to respond to problems of noise, security, utility disruption, parking violations and traffic problems.

(d) During the demolition and construction of the Project, Developer and its contractors and subcontractors performing work on the Project shall hold regular meetings with a representative or representatives designated by the Agency so as to facilitate the work of the